IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4407 OF 1993

Suresh Pundlik Tharkar .... Petitioner
V/s
Chairman/Secretary, Shikshan Prasarak Mandal & Ors..... ..... Respondents.

Mr.Abhay Neyogi with Yogesh Paranjape, Adv. for the petitioner.

Mr.M.D.Yelkar, Adv. For respondent No.1.

Mr.A.V.Bukhari, Adv. For respondent No.2.

CORAM: A.P. DESHPANDE, J.
3.5.2007

ORAL JUDGMENT:

The present petitioner is working as a Head Master of the secondary school which is administered by respondent No.1-Shikshan Prasarak Mandal. The present petitioner claims that he belongs to schedule caste category of the backward class and thus is entitled to all the benefits extended to the members of the said class, such as reservation in the promotional post. It is not in dispute that respondent No.2 herein is a candidate belonging to ` Mahar' caste which falls in the category of schedule caste and was desirous of being appointed in the promotional post of Head Master. The present petitioner was at serial No.18 in the seniority list whereas the respondent No.2 herein was at serial No.19. There are two schools administered by respondent No.1 and thus the management, according to roaster, was under obligation to promote a candidate from schedule caste category to one of the post of Head Master in the school. Respondent No.1 chose to promote the present petitioner to the post of Head Master. It appears that the respondent No.2 herein was not aware as to whether the present petitioner is entitled to claim the post on the basis of reservation and hence he made inquiries from the various sources and came to know that the petitioner is not a

permanent resident of State of Maharashtra but hails from State of Karnataka and thus not entitled to the reserved promotional post of Head Master from schedule caste category in supersession of the claim of respondent No.2. After moving the the respondent No.1 and the Education Officer and other authorities from the Education Department the respondent No.2 ultimately filed an appeal before the School Tribunal contending therein that as the present petitioner does not belong to schedule caste from the State of Maharashtra, he is not entitled to claim any benefit on the basis of reservation in State of Maharashtra. The only question that fell for consideration of the School Tribunal is as to whether the petitioner herein (respondent before the School Tribunal) is entitled to claim promotional post in view of provisions made for reservation in favour of schedule caste category candidates. The Tribunal answered the issue against the present petitioner by holding that the petitioner is resident of State of Karnataka and thus a migrant to the State of Maharashtra. Having so held the Tribunal had no difficulty in concluding that the petitioner cannot claim any benefit as he cannot be treated as a candidate belonging to schedule case in relation to the State of Maharashtra. Aggrieved by this judgment and order passed by the School Tribunal, this petition has been filed. Perusal of the petition reveals that according to the petitioner he has been residing at at Gargoti a place in Kolhapur district in the State of Maharashtra from June, 1973 to April, 1979. The petitioner has then stated that prior to his moving to Gargoti, he was residing at Kadaklat, Taluika Chikodi, District Belgaum which falls in the State of Karnataka. The contention of the petitioner is that the village Kadaklat was comprised within the boundaries of erstwhile Bombay State and thus the petitioner is entitled to the benefits made available to the candidates belonging to schedule caste category in State of Maharashtra, though admittedly the petitioner is a permanent resident of Karnataka State. It is then contended that caste `Mahar" is included in schedule caste in the State of Karnataka so also in the State of Maharashtra and hence the petitioner can claim the benefit available to schedule caste category even in the State of Maharashtra. The petitioner was appointed as assistant teacher in the concerned school in September, 1979 and sinece then till date he is in uninterrupted service in the said school. The petitioner has been appointed to the post of Head

Master by granting promotion as candidate belonging to schedule caste category and it is this promotion granted to the petitioner, the legality of which is questioned by respondent No.2 by filing an appeal before the Tribunal. Respondent No.2 has filed an affidavit in reply and along with the same two vital documents are placed on record at Exhibits 1 and 2. Exhibit 1 is a certificate of age and domicile which is issued in the year 1993 i.e. after filing of the appeal by respondent No.2 before the Tribunal. Relevant portion of the domicile certificate reads thus:

> "IT IS HEREBY CERTIFIED THAT Shri Suresh Pundalik Tharkar of KuNool was born on the Eighth (08) day of October (10) in the year one thousand nine hundred and fifty six (1956) at Khadaklat, Tal. Chikodi in the State of Karnataka within territory of India.

The domicile certificate has been issued on the basis of school leaving certificate and the affidavit filed by the petitioner. It is certified that the petitioner is domiciled in the State of Maharashtra by reason of residence. Next document is caste certificate issued on 22.10.1992 which certifies that the petitioner belongs to Hindu Mahara caste. On the basis of this factual position the petitioner prays for quashing of the judgment and order passed by the Tribunal. The issue is no longer *res integra* and is squarely covered by judgment of Division Bench of this Court in the case of ***Bankimchandra Makanbhai Patel*** v/s ***State of Maharashtra & Anr.***, 2006(2) Mh.L.J. 664. In the first place the said judgment reiterates the settled position in law that a person belonging to a caste or tribe which is notified in that State is entitled to benefit wholly in that State and not in the State where he/she migrates. Even if the caste is notified as schedule caste in both the States benefits cannot be claimed in the migrant State but can only be claimed in the State of origin. In the second place the judgment considers the cummulative effect of the relevant provisions of State' sReorganization Act, Bombay Reorganization Act in conjunction with the Presidential Order and the amendment made thereto. It holds thus:

> "In other words, though the Presidential Notification was issued in the

year 1950 because of the State Reorganization Act, 1956 and Bombay State Reorganization Act, the benefits would be available to only those persons amongst the notified scheduled tribes who are residents in the localities. In other words, if on 1.1.1960, when the State of Maharashtra came into being, if there was a person belonging to any of the notified scheduled tribes in the State of Maharashtra and if he was resident in the localities in the State of Maharashtra only then shall such person will be entitled to the benefits as a member of the scheduled tribe in relation to that State provided he was also resident in the erstwhile State of Bombay on the date of the Presidential Notification dated 10.8.1950 and on 1.11.1956 when the new State of Bombay came into being. This would mean that only those members of the Scheduled tribes who are included as a notified residents in the State of Maharashtra and in the localities in which they are notified as on 1.1.1960, would be entitled to be treated as S.T. In relation to the State of Maharashtra. This aspect has not been considered by both the division benches as their attention was not drawn to the same. The same reasoning will also apply insofar as scheduled castes are concerned."

The Division Bench for recording the said finding has relied on the judgment of the Constitution Bench of the Supreme Court in the case of ***Marri Chandra Shekhar Rao*** v/s ***Dean, Seth G.S.Medical College & Ors.,*** (1990) 3 SCC 130. The Supreme Court has held that a person who is recognized as member of schedule tribe/schedule caste in his original State will be entitled to all the benefits under the Constitution in that State alone and not in all parts of the country wherever he migrates. The issue is squarely covered by the Division Bench judgment of this Court referred to herein above.

2. The case of the petitioner is that as his family hails from an area which falls within the boundaries of erstwhile State of Bombay, on formation of State of Maharashtra at a later point of time, all the persons residing in that area would be entitled to the benefits under the Constitution in State of Maharashtra, though as a matter of fact the petitioner and his family, after State' s Reorganization Act are

permanent residents of State of Karnataka. The said contention cannot be accepted as the benefits are extended to schedule caste and schedule tribe in relation to that State viz. State of their original and no benefit can be claimed in any other State. In this view of the matter I do not find any fault with the judgment and order passed by the School Tribunal. If the submission made by the learned counsel for the petitioner is accepted the same will result in absurd consequences in as much as a person like the petitioner would be entitled to claim benefit not only in the State of Karnataka but also in the State of Maharashtra which would be contrary to legislative intent. The learned counsel for the respondent is justified in contending that a person from outside State cannot be permitted to to encroach on the seats available, in the prescribed percentage for reserved category and thereby reduce chances of the locals which would not be in keeping with the object sought to achieved by the Constitution of India and the Presidential Order. In the result petition deserves to be rejected.

3. Before I part with the judgment it is relevant to note that the initial appointment of the petitioner is also against the vacancy earmarked for schedule caste category as an assistant teacher. The petitioner is in continuous service since last 28 years. The counsel for the petitioner apprehends that the management may terminate the petitioner from service in view of this judgment. The learned counsel Mr.Yelkar, appearing for the Society, in all fairness states that the management will not terminate the petitioner on the ground that the petitioner was wrongly appointed against an schedule caste vacancy. Thus the initial appointment of the petitioner as Assistant Teacher shall be deemed to be legal and proper. However, writ petition is dismissed. Rule discharged with no order as to costs.